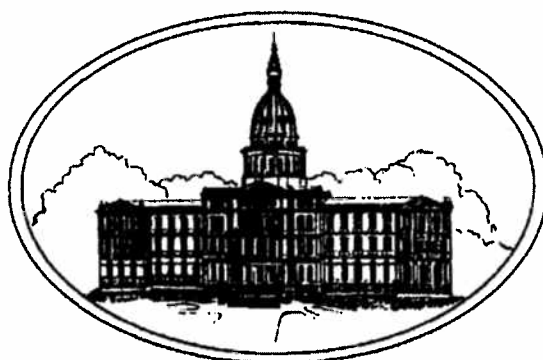


Subcommittee on Accountability and Public Safety

Final report and recommendations



*State Capitol
Lansing, Michigan*

*Rep. Tonya Schuitmaker
Chair of Subcommittee*

***Subcommittee on Accountability and
Public Safety
2006 Subcommittee Members***



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Summary

This report is submitted by the Subcommittee on Public Safety and Accountability to the full House Judiciary Committee for purposes to review and consider its recommendations regarding the recent failures exposed in Michigan's parole system.

The Subcommittee on Public Safety and Accountability was formed in July 2006 by Bill Van Regenmorter, chair of the House Judiciary Committee, and Michigan Speaker of the House Craig DeRoche to examine the corrections system mistakes that allowed murderer Patrick Allen Selepak to be released from prison following his parole violation for a domestic violence assault.

The subcommittee conducted four public hearings throughout the state to answer tough questions to determine what is working in the system, what can be improved and, most importantly, what is failing. After taking considerable written and oral testimony, the subcommittee in this report has issued a series of findings combined with recommendations aimed at serving as a catalyst for significant policy and institutional changes.

This report first examines significant dates beginning from the day Selepak was originally released on June 14, 2005. The Michigan Department of Corrections (MDOC), Michigan State Police (MSP), local law enforcement and the judicial system officials who work with parolees cooperated with the subcommittee to answered questions at the hearings.

The testimonies, opinions and information provided to the subcommittee contributed to the results and findings issued in the report for future implementation of initiatives to close any loopholes or failures in the system.

"What had been missing from the work of prison systems was a coherent, consistent strategy for reducing the likelihood that the released prisoners would commit new crimes after their release. While parole systems have attempted to incentivize good behavior and monitor for violations, their approaches were generally not driven by reliable research. Instead, they were simply the best ideas that corrections officials could devise with too little information."

Testimony from Jeff Padden, former chair of the House Committee on Corrections

Patrick Selepak Timeline with Recommendations

June 14, 2005 - Patrick Selepak was paroled from Ionia with two years left on his original armed robbery sentence. The parole board through the statistical risk grid deemed Selepak a **"High Assaultive Risk and Low Property Risk"** parolee. He was ordered to pay a total of \$480 in Crime Victims Assessments and \$960 in supervision fees which could be paid in monthly installments. He was assigned standard parole conditions with five additional special conditions that included:

1. **REPORTS:** You must contact the field agent as instructed no later than the first business day following release. Thereafter, you must report truthfully as often as the field agent requires. You must report any arrest or police contact or loss of employment to the field agent within 24 hours, weekends and holidays excepted.
2. **RESIDENCE:** You must not change residence without prior permission of the field agent.
3. **TRAVEL:** You must not leave the state without prior written permission.
4. **CONDUCT:** You must not engage in any behavior that constitutes a violation of any criminal law of any unit of government. You must not engage in assaultive, abusive threatening or intimidating behavior. You must not use or possess controlled substances or drug paraphernalia or be with anyone you know to possess these items.
5. **TESTING:** You must comply with the requirements of alcohol and drug testing ordered by the field agent or law enforcement at the request of the field agent. You must not make any attempt to submit fraudulent or adulterated samples for testing. You must not hinder, obstruct, tamper or otherwise interfere with the testing procedure.
6. **ASSOCIATION:** You must not have verbal, written, electronic or physical contact with anyone you know to have a felony record without permission of the field agent. You must not have verbal, written, electronic or physical contact with anyone you know to be engaged in any behavior that constitutes a violation of any criminal law of any unit of government.
7. **FIREARMS:** You must not own or possess a firearm of any type, including any imitation or simulation of a firearm. You must not be in the company of anyone you know to possess these items unless you have received written permission from the field agent.
8. **OTHER WEAPONS:** You must not use any object as a weapon. You cannot own or possess a weapon of any type or any imitation. Any ammunition, firearm components or being in the company of anyone you know to possess these items is prohibited.
9. **EMPLOYMENT:** You must make an earnest effort to find and maintain legitimate employment, unless engaged in an alternative program approved by the field agent. You must not voluntarily change employment or participate in an alternative program without the prior permission of the field agent.
10. **SPECIAL CONDITION:** You must comply with special conditions imposed by the parole board, and with written or verbal orders made by the field agent.

RECOMMENDATIONS:

- ❖ *Legislature should review and provide oversight for parole guidelines and parole standards for determining risk;*
- ❖ *Legislature should review referral to effective substance abuse treatment programs;*
- ❖ *A released "High Assaultive Risk" parolee should report to their parole agent within 24 hours unless they are transferring out of state or there is a distance factor (ie: Leaving Marquette prison and going to southeast Michigan)*
- ❖ *MDOC should report to the Legislature on participation progress with the NACIS (Interstate Compact) ensuring that the state of Michigan's implementation correlates with the goals and objectives of the national system; and*
- ❖ *Legislature should monitor and evaluate the Michigan Prisoner ReEntry Initiative (MPRI), which will provide more accurate assessment of risk of recidivism, focus prison programming more sharply on reducing such risk, and provide stronger planning for the transition to supervision and programming in the community. Transition plans address intensity of supervision needed based on risk, as well as housing, employment, substance abuse, and other risk factors.*

Aug. 10, 2005 – This subcommittee could not substantiate a report that an unidentified police agency received a call stating Selepak was using drugs and alcohol, which were violations of his parole. The alleged incident happened shortly before midnight on Aug. 10, 2005 when police arrived at the residence Selepak had been residing since his release. It was reported they found no evidence of substance abuse.

OTHER FINDINGS:

Following the news coverage of the Selepak murders, there were several reports indicating that he had been drinking and using drugs. However, most of the reports were inconclusive, and most importantly, they were either never reported to the parole agent or not logged by the agent. The parole agent cannot respond to unknown or unreported parole violations.

There was a general consensus that law enforcement's adjustment to the recently instituted Electronic Monitor Center's 1-800 number, intended to replace a direct call to the parole agent, has resulted in mixed analysis. Several agencies, especially in smaller jurisdictions, continue to call the parole agent directly and have no knowledge of the 1-800 number. In addition, there is a perception that if law enforcement contacts the 1-800 number they are less likely to be detained for less serious offenses such as drug and alcohol use. There was no direct testimony indicating why this was the case; however, MDOC indicated this was something that needed to be rectified.

law enforcement is well aware of the parolee and can make an effort to return to the residence to investigate the report. While there is usually not a new crime that has occurred, it is imperative that everything is done to report an incident involving a parolee, even if they are not immediately located.

October 23, 2005 – Employees in a New Baltimore grocery store, where one of Selepak's future victims worked, called police regarding Patrick Selepak loitering in and near the store on several occasions. Police responded and talked to Selepak. It was reported he had a flask of vodka, however, police did not find one. It was determined that no illegal activity had occurred, therefore, Selepak was told by police to stop loitering and move along.

RECOMMENDATIONS:

- ❖ *Communication improvements need to occur between police and parole officers. Parole officers need to know when their parolees are suspected of suspicious behavior even if a new crime has not occurred.*
- ❖ *Require MDOC to require a parolee with a history of drug or alcohol abuse to be tested at least twice a month if the parolee has been placed in intensive, maximum, or medium levels of supervision.*
- ❖ *Require MDOC to report annually (April 1) to the Legislature on the number of parolees returned to prison in the preceding calendar year for a violation of parole due to drug or alcohol abuse and how many violations of that type occurred before parolees were returned.*

October 25, 2005 – New Baltimore Police contacted MDOC to inform them of the grocery store incident. A special condition of Selepak's parole included a prohibition against consuming alcohol and, according to policy; a test should have been administered. There is no record to indicate that this testing was done on a timely basis according to policy.

October 27, 2005 – Chesterfield Township Police Department responded to a report from Selepak's former girlfriend that she had been assaulted by Selepak at a mobile home park in Chesterfield Township in Macomb County. The police report described the abuse indicating in the "lethality assessment" that the suspect had done the following:

- ✓ Used or threatened to use a weapon;
- ✓ Abuses alcohol or other drugs;
- ✓ Is violent outside the relationship; and
- ✓ Threatened to kill the victim.

Selepak had fled the scene and an investigation was conducted by the Chesterfield Township Police Department. However, the parole agent was not immediately informed of the incident.

October 28, 2005 – Chesterfield Township Police Department presented their report to the Macomb County Domestic Violence Assistant Prosecuting Attorney.

RECOMMENDATIONS:

- ❖ *The law enforcement agency that is entering the information into LEIN should also do the notification to MDOC. Ideally it should be an electronic notification.*
- ❖ *Each agency be responsible for entering warrants within 24 hours.*

Nov. 7, 2005 - A Chesterfield Township police officer and Selepak's parole agent happened to come in contact outside of work and the information regarding Selepak being a suspect in a domestic violence case was relayed.

Nov. 8, 2005 - According to the MDOC, Selepak reported for his regular appointment where his parole agent arrested him for a parole violation based on the information that Chesterfield Township Police Department was going to press charges for the domestic violence assault.

When a parolee is taken back into custody, the department must determine identity. Therefore, Selepak should have been Live Scanned and fingerprinted. It is unclear whether the parole agent placed the arrest information into the Criminal History Record (CHR). General practice for law enforcement when a person is fingerprinted for a felony or a misdemeanor greater than 93-days, they are entered in the CHR. Then the CHR can be queried by LEIN. The parole agent did later follow-up with law enforcement agencies investigating the domestic assault.

Selepak was taken to Jackson to await a hearing before an Administrative Law Examiner (ALE). His parole agent recommended he be sent back to prison.

RECOMMENDATIONS:

- ❖ *MDOC needs to examine how to better communicate with the courts and law enforcement for informing them that a parolee is back in MDOC custody.*
- ❖ *MDOC and law enforcement need to improve their integrated data system. Booking system that coordinates with MDOC, law enforcement and the courts.*
- ❖ *Legislature needs to monitor the status of law enforcement, state departments and courts converting all criminal history data to a standardize system.*

November 2005 - January 2006 - Selepak remained in custody of the Department of Corrections on a parole violation for 53 days. A 2003 decision by the Michigan Supreme Court held that prisoners may be kept in prison beyond 45 days even without a decision on their parole.

Outlined below is the MDOC's summary:

FOA Operating Procedure (OP) - 06.06.115, Parole Violation Processing, provides, in summary, these key steps of the revocation process:

1. Field agent becomes aware of alleged parole violations and conducts an investigation.
2. Field agent determines response in accordance with the decision guide.

OTHER FINDINGS:

On Jan. 14, 2005 the Executive Office issued Executive Order No. 2005-1 entitled "State Office of Administrative Hearings and Rules Executive Reorganization" (see attached). The stated intent was to bring all departmental Administrative Law Examiners (ALE) under the Department of Labor and Economic Growth (DLEG) to be more efficient, effective, understandable and responsive. Some departments were able opt out of the transfer, however, MDOC's ALEs were transferred to DLEG.

The ALE in MDOC reviews parole violations and prison rules violations. A general consensus determined that there is no current strict regulation on ALEs, especially when they are performing duties for a department they are not managed by. There are no checks and balances in situations where the either the parole board, parole agent or victim of the potential new crime disagrees with the ALE decision. Prior to the EO, the MDOC had some managing authority.

The subcommittee's primary concern, based on certain testimony, was that this reorganization may cause undo delays to cases, resulting in possible department posture of specific units waiting to hear from an individual in a department under different management. Therefore, a lack of accountability is fostered.

RECOMMENDATIONS:

- ❖ *Senate Bill 1196/Public Act 315 of 2006*
- ❖ *House Bill 5967/Public Act 316 of 2006*
- ❖ *Transfer MDOC ALEs from DLEG back to MDOC.*
- ❖ *MDOC and law enforcement need to improve their integrated data system. Booking system that coordinates with MDOC, law enforcement and the courts.*
- ❖ *The MDOC should review the transition plans of parole violators to determine how the plan can be strengthened to reduce the risk of further recidivism through increased supervision or targeted programming to address known risk factors of the prisoner. Both the parole agents and the community programming providers should be involved in the review of and revisions to the transition plan to increase the likelihood of success.*

Dec. 21, 2005 - A misdemeanor domestic violence MCL 750.81(2) complaint was sworn to by the complaint witness and signed by the 42-2 District Court Judge Cassidy. The subcommittee was unable to determine if an actual warrant was issued. A January 11, 2006 pre-trial hearing was set up. A notice was sent out to the listed address with no knowledge that Selepak was in MDOC custody or that he was a parole violator.

Jan. 12, 2006 - District Judge Paul Cassidy issued a bench warrant for failure to appear for a Jan. 11, 2006 pre-trial on the domestic violence charge from Oct. 27, 2005. The Chesterfield Township Police Department issued a 25 mile pick-up for the warrant.

RECOMMENDATIONS:

- ❖ *Review how pick-up mileage is determined. A more in-depth discussion needs to occur on more consistent standards for determining mileage.*

Jan. 14, 2006 — A Michigan State Police Trooper pulled over a black 1994 GMC Jimmy in Carsonville in Sanilac County. Selepak was a passenger, and the young woman driving held a graduated license, which requires that another licensed driver, age 21 or older be in the car. The officer ran a warrant LEIN check on Selepak where the bench warrant was discovered with a 25 mile pick-up.

The stop occurred 70 miles from Chesterfield Township. Selepak explained that he did not know of the warrant and that he had just been released from prison. The officer did not contact his parole officer and told Selepak to report to Macomb County District Court to take care of the warrant. It was 10:20 p.m., and Selepak had 40 minutes remaining on his parole curfew.

RECOMMENDATIONS:

- ❖ *If you have a parolee with a warrant, it should be an automatic arrest. There is some varying interpretation of current statute from law enforcement and MDOC on this issue. It either needs to be clarified through correspondence with law enforcement and MDOC or the law needs to be clarified. Law enforcement is not fully aware that police have the authority to make an arrest for a parole violation (MCL 791.239 & 764.15).*
- ❖ *Encourage local law enforcement relays of warrant arrests.*
- ❖ *The following principles should be applied in order to create a functioning warrant pick-up program:*

1. Establish a dedicated fund providing for arrest, transportation and housing of fugitives.

Create special fund to be used for the following purposes:

- ❖ *Provide grants for local or regional fugitive apprehension and transport teams. The teams would locate and transport individuals wanted on criminal warrants, bench warrants issued in criminal or PPO cases and bench warrants issued in domestic relations cases.*
- ❖ *Reimburse county sheriffs for the cost of jailing fugitives who cannot post bail.*
- ❖ *Provide grants for alternative correction facilities or monitoring programs for misdemeanor fugitives, PPO offenders, and individuals found in contempt of court for failing to pay child support.*

RECOMMENDATIONS continued:

- ❖ *The law enforcement agency that obtained the arrest warrant, or in cases of bench warrants, an agency from the jurisdiction of the court that issued the bench warrant, will be responsible for the transport of the fugitive.*

5. User Fees.

- ❖ *In addition to being assessed \$100 upon conviction of a crime or a finding of contempt, the fugitive shall be ordered to reimburse the sheriff or the fund, as applicable, for the cost of his or her jail stay.*
- ❖ *Incentives for fugitives to surrender.*
- ❖ *Fugitives who surrender voluntarily, or who complete court ordered requirements, will have an opportunity to have costs or fees waived.*

Jan. 17, 2006 - Selepak met with his parole officer and informed him of the domestic violence warrant.

Jan. 18, 2006 - Selepak appeared for a bench warrant arraignment. He could not pay the posted \$1,000 bond and therefore spent the night in Macomb County Jail.

Jan. 19, 2006 - Selepak appeared before Judge Cassidy in 42-2 District Court in Mt. Clemens and pleads guilty to the charge of misdemeanor assault - domestic violence. The judge sentenced Selepak to 64 days in jail, with credit for time served.

RECOMMENDATIONS:

- ❖ Prevents an individual with a prior assault charge from having a domestic violence charge waived. The only current restriction against this possible dismissal is if the defendant has a prior domestic violence conviction. Selepak had a clear history of violent behavior. (HB 5968)

Jan. 31, 2006 - Selepak and Bachynski committed an armed robbery at a Mr. Pita store near 23 Mile and Gratiot in Chesterfield Township.

Feb. 7, 2006 – Selepak missed a scheduled parole appointment. Parole agents are required to conduct a prompt investigation when parolees miss scheduled appointments.

OTHER FINDINGS:

As of August 22nd there were 2621 parole absconders and approximately 15,000 parolees under MDOC supervision, amounting to 17 percent of the parole population not accounted for. In the

Additional Issues with Recommendations

Issue: Even if there were no errors in the system, no one can say that parolees will not re-offend. If a parolee violates parole or commits a new crime and returns into MDOC custody, clearly they are unsuccessfully transitioning into society. In the time they are incarcerated, a re-transition evaluation should occur.

RECOMMENDATIONS:

- ❖ *The MDOC should evaluate individual prisoner's transition plan and if they violate their parole, resulting in incarceration, the department should determine what led to the transition failure.*
- ❖ *The Legislature should be reviewing the return-to-prison rate in order to evaluate the success of MPRI. The MDOC and the JEHT Foundation are funding a current evaluation of the MPRI to provide these exact answers.*

Issue: In October 2005, the Office of the Auditor General conducted a performance audit on the Accuracy of Prisoner Release Dates (see attached). One of the findings addressed Sentence and Release Date Adjustment Information. The main finding was that the Corrections Management Information System (CMIS) contained inaccurate and incomplete information, which could result in MDOC releasing prisoners before or after the correct release date. The audit sampled 30 paroled prisoners of all computation types and compared case file information to data recorded on CMIS. The audit noted 12 cases in which clarification was needed. In six of the 12 cases, MDOC did not contact the court.

The MDOC's preliminary response to Auditor General Report stated the plan should rectify inaccurate and incomplete information to provide better instruction, defining the steps necessary when completing a prisoner's release date. New staff positions were established in January 2005 to input sentencing data, however, there is still a concern that, like in the Selepak case, pending charges or warrants are still not being inputted.

RECOMMENDATIONS:

- ❖ *Per the Auditor General report, MDOC needs to accurately input release date adjustments into CMIS.*
- ❖ *Currently, the MDOC conducts a warrant LEIN check 24 hours before a prisoner is released. The MDOC needs to determine if it is more effective to do a full criminal history check instead of a warrant LEIN check.*

APPENDIX

Appendix 1: March 24, 2006 Detroit News article entitled “More errors in Selepak parole”

Appendix 2: Executive Order 2005-01 “State Office of Administrative Hearings Rules
Executive Reorganization”

Appendix 3: October 2005 Auditor General Report “Accuracy of Prisoner Release Dates”

staff advice.

As a result, parole officials required him not to use alcohol, and testing for it, especially under certain circumstances, was required.

State rules require alcohol testing for parolees like Selepak if they are fired from their job and if there are allegations of alcohol use. Awe appears to have failed to conduct the required tests after four such incidents.

In July, Selepak was fired from working at a Macomb Township Taco Bell after about two weeks on the job. Also, Selepak was told not to return to a job in mid-October as a roofer.

In August, Chesterfield police checked on a report of underage drinking at a party Selepak attended.

And on Oct. 23 -- four days before he battered his girlfriend at the time -- Selepak and the teen-ager were suspected of loitering in a New Baltimore grocery store. The report included an allegation that Selepak had a flask of vodka in his jacket.

But the failure to consider transferring Selepak to North Carolina at the beginning of his parole may be the most tragic mistake of all.

Marlan said prison records indicate that Selepak never gave them a specific proposed address in North Carolina, a requirement.

Martin, Selepak's sister, disputes that.

Records show Selepak discussed a transfer in May, even before he was released. Martin, the person who wanted him the most, said she picked up her brother the day he was released from prison in June and stayed in Michigan for about two months in hopes of taking him home with her.

But Awe had told Selepak that he owed \$360 for a crime-victim fee and \$960 for parole supervision fees, Martin said. Marlan said Selepak would have had to pay the crime-victim fee and \$40 for every month he remained on parole in Michigan.

Selepak never paid any of his fees, records show. But Martin said she could have paid a more reasonable sum than the original \$1,320.

It was never a certainty that Selepak would have been transferred to North Carolina for supervision there, Marlan said.

The Selepak case began when the Berelses were found dead in their home. Scott Berels had been injected with bleach. Police say Melissa Berels knew Selepak through telephone chat lines.

When police caught Selepak and Bachynski, they were in a truck with Johnson's frozen remains hidden in the truck bed.

Authorities later learned that Selepak should have been in prison before any of the killings. He choked and battered his girlfriend in October, but officials failed to hold a parole revocation hearing within 45 days.

In the past, that meant he had to be released to the streets again. But officials apparently didn't realize the state's Supreme Court overturned that deadline in a ruling years ago.

Instead, Selepak was released back on parole Jan. 10 after 64 days behind bars.

Two days later, a different parole officer reviewing Selepak's case wrote:

"Selepak has no family in the area and has run out of local options for places to live. ... His ultimate goal is to transfer to North Carolina where his sister lives, but he realizes all fees must be paid prior to any transfer."

A record from that period shows parole officials expected him to pay \$960 for their services, though he likely owed them no more than \$200 plus the \$360 crime-victim fee.

Instead, Selepak moved in with Bachynski, his latest girlfriend and the woman charged with helping him in the killing spree.

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Insurance Services, created under Executive Order 2000-4, MCL 445.2003.

3. "Contested Case" means that term as defined in Section 3(3) of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.203.

4. "Department or Agency" includes each principal department of state government, an agency, a board, a commission, a tribunal, or other entity within the Executive Branch of state government. "Department or Agency" does not include the Governor, the Lieutenant Governor, the Secretary of State, the Attorney General, or the Executive Office of the Governor.

5. "Department of Labor and Economic Growth" means the principal department of state government created as the Department of Commerce under Section 225 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.325, renamed the Department of Consumer and Industry Services under Executive Order 1996-2, MCL 445.2001, and renamed the Department of Labor and Economic Growth under Executive Order 2003-18, MCL 445.2011.

6. "Department of State" means the principal department of state government created under Section 25 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.125.

7. "Hearing Officer" means an individual who conducts or handles administrative hearings or administrative hearing functions for a Department or Agency, including, but not limited to, a hearing officer, hearings officer, hearing examiner, administrative law judge, or a presiding officer. "Hearing Officer" does not include an elected state official, a member of a board, commission, or tribunal appointed by the Governor, or other state officer or employee appointed by the Governor.

8. "Office of Regulatory Reform" means the entity created within the Executive Office of the Governor under Executive Order 1995-6, MCL 10.151, as codified within the Department of Management and Budget under Section 34 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.234 (as added by 1999 PA 262), transferred to the Executive Office of the Governor under Executive Order 2000-1, MCL 10.152, and re-transferred to the Department of Management and Budget under Executive Order 2002-11, MCL 10.153.

9. "State Office of Administrative Hearings and Rules" or "SOAHR" means the Type I Agency created within the Department of Labor and Economic Growth under Section II.

10. "Type I Agency" means an agency established consistent with Section 3(a) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

11. "Type III Transfer" means that term as defined under Section 3(c) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

II. CREATION OF THE STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

A. The State Office of Administrative Hearings and Rules (SOAHR) is created as a Type I Agency within the Department of Labor and Economic Growth. The SOAHR shall be headed by a director known as the Executive Director of the State Office of Administrative Hearings and Rules. The appointing authority for the Executive Director of the SOAHR shall be the Governor. The Executive Director of the SOAHR shall administer the personnel functions of the SOAHR and be the appointing authority for employees of the SOAHR.

B. As a Type I Agency, the State Office of Administrative Hearings and Rules shall exercise its prescribed powers, duties, responsibilities, functions, and any rule-making, licensing and registration, including the prescription of any rules, rates, and regulations and standards, and adjudication independently of the Director of the Department of Labor and Economic Growth. The budgeting, procurement, and related management functions of the SOAHR shall be performed under the direction and supervision of the Director of the Department of Labor and Economic Growth.

A. Except as otherwise provided in Sections II.G, II.H, and IV, all authority, powers, duties, functions, responsibilities, rule-making authority, personnel, equipment, and budgetary resources of a Department or Agency involved in any of the following activities related to administrative hearing functions are transferred to the State Office of Administrative Hearings and Rules:

1. The conduct or handling of administrative hearings by a Hearing Officer, including, but not limited to, a Contested Case hearing or the hearing portion of a Contested Case, under the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328.
2. The designation, authorization, appointment, or selection of Hearing Officers.
3. The development, writing, and submission of any proposal for decision or report following an administrative hearing by a Hearing Officer.
4. The functions related to administrative hearings performed by a Hearing Officer or other individual such as staff support for hearings or Hearing Officers, or the management or administration of hearings or Hearing Officers.

IV. ADMINISTRATIVE HEARING FUNCTIONS AND PERSONNEL NOT SUBJECT TO TRANSFER

A. The authority, powers, duties, functions, responsibilities, rule-making authority, personnel, equipment, and budgetary resources related to the appeal, review of, or final determination regarding a decision or proposed decision issued by a Hearing Officer for a Department or Agency shall remain with the Department or Agency, and are not transferred under Section III.

B. No authority, powers, duties, functions, responsibilities, property, records, personnel, or funds held by the Civil Service Commission solely under the authority granted to the Commission by Section 5 of Article XI of the Michigan Constitution of 1963 are transferred under Section III, unless approved by the Civil Service Commission.

C. The authority, powers, duties, functions, responsibilities, rule-making authority, personnel, equipment, and budgetary resources involved in any of the following activities related to administrative hearing functions are not transferred to the State Office of Administrative Hearings and Rules under Section III:

1. Hearings conducted by an elected state officer, a member or members of a board, commission, or tribunal appointed by the Governor, or other state officer or employee appointed by the Governor.
2. An informal conference not subject to the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328, under Michigan law.
3. Any hearings conducted by the State Administrative Board or a committee of the State Administrative Board.
4. Hearings conducted by hearings officers under Part 5 of The Nonprofit Health Care Corporation Reform Act, 1980 PA 350, MCL 550.1501 to 550.1518.
5. Hearings conducted by independent hearings officers selected by the Commissioner of Financial and Insurance Services from a list submitted by the American Arbitration Association under Subsection (3) of Section 2030 of The Insurance Code of 1956, 1956 PA 218, MCL 500.2030.
6. Administrative hearings conducted by the Department of State under any of the following:
 - a. 1978 PA 472, MCL 4.411 to 4.431 (lobbyists, lobbying agents, and lobbying activity).
 - b. The Michigan Notary Public Act, 2003 PA 238, MCL 55.261 to 55.315.

E. The Office of Regulatory Reform is abolished.

VI. MISCELLANEOUS

A. An individual designated by the Governor as the Administrative Hearing Consolidation Transition Director shall be responsible for coordination of the implementation of Section III. The Administrative Hearing Consolidation Transition Director and the director of each principal department that includes a Department or Agency affected by this Order shall jointly identify the positions that will be transferred to the State Office of Administrative Hearings and Rules under Section III, consistent with this Order. The Administrative Hearing Consolidation Transition Director and the director of each principal department that includes a Department or Agency affected by this Order shall make every effort to develop agreements specifying the positions that will be transferred under Section III by the effective date of this Order. In the event of a failure to reach agreement on the positions to be transferred under Section III, the Administrative Hearing Consolidation Transition Director shall develop a written recommendation specifying the positions to be transferred and submit the recommendation to the Governor for consideration and approval. All transfers to the SOAHR shall be consistent with this Order and documented by a memorandum of understanding between the director of the principal department that includes a Department or Agency affected by this Order and the Director of the Department of Labor and Economic Growth.

B. The Administrative Hearing Consolidation Transition Director, in consultation with the Director of the Department of Labor and Economic Growth, shall provide executive direction and supervision for the implementation of all transfers to the State Office of Administrative Hearings and Rules under Section III.

C. The Administrative Hearing Consolidation Transition Director, in consultation with the Director of the Department of Labor and Economic Growth, shall immediately initiate coordination with Departments and Agencies to facilitate the transfers under Section III. Each principal department that includes a Department or Agency affected by the transfers under Section III shall issue, after consultation with the Administrative Hearings Consolidation Transition Director, a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the transferring departments and agencies related to the transfers under Section III.

D. Departments and Agencies and state officers shall fully and actively cooperate with the State Office of Administrative Hearings and Rules and the Administrative Hearings Consolidation Transition Director in the implementation of this Order. The Executive Director of the SOAHR may request the assistance of other Departments and Agencies and state officers with respect to personnel, budgeting, procurement, telecommunications, information systems, legal services, and other management-related functions, and such departments and agencies shall provide such assistance.

E. The Executive Director of the State Office of Administrative Hearings and Rules shall administer the assigned functions transferred under this Order in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities under this Order.

F. The Executive Director of the State Office of Administrative Hearings and Rules in writing may delegate within the SOAHR a duty or power conferred on the Executive Director of the SOAHR by this Order or by other law, and the person to whom the duty or power is delegated may perform the duty or exercise the power at the time and to the extent that the duty or power is delegated by the Executive Director of the SOAHR.

G. The Executive Director of the State Office of Administrative Rules, or his or her designee, may hire or retain such contractors, subcontractors, advisors, consultants, and agents as the Executive Director may deem advisable and necessary, in accordance with the relevant law and the procedures, rules, and regulations of the Civil Service Commission and the Department of Management and Budget, and may make and enter into contracts necessary or incidental to the exercise of powers and performance of the duties of the SOAHR and its Executive Director. Under this provision, the Executive Director of the SOAHR, or his or her designee, may specifically hire or retain such contractors, sub-contractors,

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Audit Conclusion:

CMIS and OMNI access controls were not effective in preventing inappropriate access to information affecting release dates.

Material Condition:

DOC had not established a comprehensive information systems security program and complete access controls over CMIS and OMNI. As a result, DOC cannot ensure the security of CMIS and OMNI data, including confidential personal prisoner and employee data. (Finding 5)

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Agency Response:

Our audit report contains 5 findings and 5 corresponding recommendations. DOC's preliminary response indicated that it agrees with all 5 of the recommendations.

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A copy of the full report can be
obtained by calling 517.334.8050
or by visiting our Web site at:
<http://audgen.michigan.gov>



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ACCURACY OF PRISONER RELEASE DATES

COMMENT

Background: A release date is the date a prisoner is released to parole or discharged from a Department of Corrections (DOC) prison or camp. Release dates are computed in the Corrections Management Information System (CMIS) and stored within CMIS and the Offender Management Network Information System (OMNI). Prisoner release dates are affected by release date adjustments*, including misconducts, forfeitures*, restorations*, and dead time*. The complexity of the computation of a prisoner release date is magnified in cases in which the prisoner is convicted of more than one crime and the crimes are subject to different release date computation types, such as disciplinary credits*, disciplinary time* (commonly known as "truth in sentencing"), drug law credits*, and good time credits*, and factors such as concurrent sentences*, consecutive sentences*, gun law sentences*, habitual offender*, and proposition B*. The rules for computing release dates are different for each computation type. Furthermore, there are a number of outside influences that affect sentences, including clarity of sentencing information from the courts and law changes from the Legislature that impact the computation of release dates.

Audit Objective: To assess the effectiveness of DOC's efforts to ensure the accuracy of prisoner release dates.

Conclusion: DOC was moderately effective in its efforts to ensure the accuracy of prisoner release dates. Our assessment disclosed one material condition*. DOC did not ensure that CMIS was programmed to correctly and completely compute prisoner release dates for all types of sentences (Finding 1). Our assessment also disclosed reportable conditions* related to data edits, sentence and release date adjustment information, and audit trails (Findings 2 through 4).

FINDING

1. Release Date Computations

DOC did not ensure that CMIS was programmed to correctly and completely compute prisoner release dates for all types of sentences. As a result, CMIS inaccurately computed some prisoner release dates resulting in the early release of these prisoners.

* See glossary at end of report for definition.

date computation rules and provides two nonautomated methods for computing release dates for simple cases. DOC has the choice of using either nonautomated time computation methods to audit the accuracy of the CMIS-computed release dates. However, the two methods result in different release dates.

We selected 3 computation types then randomly selected and recomputed release dates for 4 of 4,428 prisoners convicted under disciplinary credit laws who were paroled between October 2003 and August 2004. We computed release dates using the two methods in DOC's time computation manual and informal computation rules provided by DOC. We compared our results to the release dates computed by CMIS. For each of the 4 cases, the two methods resulted in different release dates, neither of which matched the release dates computed by CMIS. The differences between the release dates computed using the time computation manual and the release dates computed by CMIS ranged from 1 to 11 days. Although we tested release dates of only 4 prisoners, we believe that a significant number of other prisoners would have release date differences because the two nonautomated methods do not agree and the two methods do not match how CMIS is computing release dates. None of the 4 prisoners were released before their earliest release date*. The 4 prisoners were convicted of crimes such as murder (second degree), felony firearm, breaking and entering, home invasion, possession of a narcotic, and unlawful driving away.

- d. DOC did not completely define and document its prisoner release date computation rules. Michigan laws provide the foundation for the release date computation; however, the laws do not provide DOC with complete instruction on how to compute release dates. Without defined and documented release date computation rules, DOC cannot ensure that CMIS is programmed to accurately calculate release dates and DOC could not conclude whether the manual computations or the CMIS computations were correct. For example, DOC had not fully documented rules to identify how to:

- (1) Manually compute complex release dates, such as for a prisoner sentenced for more than one crime.

* See glossary at end of report for definition.

sentence, and consequently, DOC's Data Processing Division performed a major rewrite of CMIS release date computations. DOC further informed us that it continued to evaluate release date calculation problems as they were identified and made programming changes and upgrades as deemed necessary. DOC stated that in 2002, when OMNI was first populated with parole and probation offenders, it made a decision to defer major program revisions to CMIS as it did not feel that it would be an effective use of taxpayer dollars to perform major program development on outdated mainframe technology. DOC also stated that it decided to perform major program development using the new client server technology that was used to develop OMNI. DOC indicated that in 2003, as part of the fiscal year 2004-05 budget request, it requested \$1.5 million to convert CMIS to OMNI. DOC also indicated that due to budget negotiations between the executive branch and the Legislature, it received \$328,700 less than requested. DOC informed us that the approved funding included funds to convert CMIS release date computations and other programs to OMNI using in-house development staff. DOC also informed us that in May 2005, it formed a project team to define, evaluate, interpret, and document the laws and informal rules related to release date computations. DOC stated that the project team would ensure that the new system is designed and implemented to correctly compute prisoner release dates for all sentence types using client server technology. DOC also stated that the project team consists of DOC legal counsel, records office managers and staff, business owners for Field Operations and Correctional Facilities, and DIT staff. DOC further stated that written guidance and training would be developed and provided to staff responsible for computing release dates on an ongoing basis as this effort continues.

FINDING

2. Data Edits

DOC did not ensure that CMIS had sufficient data edits. Inaccurate data in CMIS could adversely affect prisoner release dates and Parole Board decisions.

are acceptable and would not be reviewed. DOC also informed us that the majority of these errors occurred because of inaccurate judgment of sentence* (JOS) documentation as well as inconsistent counting of jail time credits between DOC and the courts. DOC should continue to work with the courts to resolve instances in which the CMIS offense date is later than the CMIS corrected date.

- c. CMIS did not edit all data fields. We found invalid data in the following fields: controlling sentence code, sentence status, proposition B flag, and reason for good time change.
- d. DOC, in conjunction with DIT, did not completely document the CMIS data dictionary. The CMIS data dictionary provides users with information about CMIS data, including acceptable values for each data field. Our review disclosed values that were not defined in the CMIS data dictionary for fields such as review flag, compiled law code, sentence status, and proposition B flag. DOC and DIT informed us that the values were valid. However, they were unable to provide an explanation of what the values represented for some of the data fields.

RECOMMENDATION

We recommend that DOC ensure that CMIS has sufficient data edits.

AGENCY PRELIMINARY RESPONSE

DOC agrees and informed us that it is taking steps to comply using alternative corrective action. DOC also informed us that the time computation project team will ensure that the new time computation system contains sufficient data edits.

FINDING

3. Sentence and Release Date Adjustment Information

DOC did not always accurately input release date adjustments into CMIS and did not verify the completeness and accuracy of sentencing information received from the courts and make necessary corrections as approved by the courts.

** See glossary at end of report for definition.*

AGENCY PRELIMINARY RESPONSE

DOC agrees and informed us that it complied with the creation of the Records Specialist Intake Processing Audit Unit in December 2004. DOC also informed us that the Unit is responsible for reviewing all sentencing documentation upon receipt from the courts to ensure completeness and accuracy and to ensure that the courts have complied with statutory requirements. DOC further informed us that the Unit would conduct follow-up with the courts as necessary. DOC stated that the Unit audits the input of sentencing information into the system by facility staff and takes appropriate steps when errors are discovered. DOC also stated that facility record office supervisors are responsible for verifying the accuracy of a prisoner's release date as part of the prisoner release screening process. DOC further stated that an instructional memorandum was issued, which defined all steps that must be taken when completing a prisoner release screening time computation audit.

FINDING

4. Audit Trails

DOC did not develop complete CMIS audit trails of data used in the recomputation of prisoner release dates and the individual responsible for each recomputation. Without a complete audit trail, DOC cannot identify what information was added or changed and cannot identify who made changes to release dates.

Audit trails should electronically capture a history of changes to prisoner release dates and identify the individual that made the change, the date and time of the change, and a "before-and-after" image of release dates and release date adjustment information.

Facility records office staff are required to recompute prisoner release dates when a prisoner is within 30 days of parole or discharge, when a prisoner is transferred to a DOC community residential program, or when an amended JOS is received. During a release date recomputation, records office staff delete from CMIS all release date adjustments, such as misconducts, forfeitures, restorations, and dead time. Then the records office staff re-enter these adjustments using the time review and disposition forms in the prisoner's hard-copy file. By deleting all release date adjustments from CMIS, DOC assumes that the hard-copy file is complete and that all adjustment documents will be re-entered. This process creates the risk

ensure the security of CMIS and OMNI data, including confidential personal prisoner and employee data.

A comprehensive security program begins with the appointment of an executive level information security officer. The security program is developed based on the results of comprehensive and periodic risk assessments of data security needs. A comprehensive security program would also define and implement effective policies and procedures for granting access to CMIS and OMNI. Our review disclosed:

- a. DOC had not established a security officer position. A security officer position is given the responsibility and authority to implement information security policies, standards, and operating procedures for safeguarding all information systems resources.
- b. DOC, in conjunction with DIT, did not restrict and monitor DIT access to production data. We noted that 9 DIT information technology development staff acted as CMIS security administrators and assigned access rights to CMIS and OMNI production systems. As a result, DIT development staff could gain unauthorized access to confidential information. DOC, in conjunction with DIT, should assign security functions to individuals independent of information technology development.
- c. DOC did not define and document to whom all OMNI profiles* should be assigned or restricted. Furthermore, DOC did not identify risks of access to sensitive OMNI information. The OMNI reference manual states that an employee can only have one profile in the system. However, we noted 249 employees with more than one profile. Allowing employees to have multiple profiles could result in inappropriate access to sensitive employee and prisoner information.
- d. DOC did not maintain complete and accurate lists of individuals who can appropriately authorize access to CMIS and OMNI. As a result, DOC cannot ensure that all CMIS and OMNI user access was properly authorized.

* See glossary at end of report for definition.

